



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/648,132

08/26/2003

Joerg Schiewe

01-1394

3249

28501

7590

06/29/2008

MICHAEL P. MORRIS

BOEHRINGER INGELHEIM USA CORPORATION

900 RIDGEBURY ROAD

P. O. BOX 368

RIDGEFIELD, CT 06877-0368

EXAMINER

DIXON, ANNETTE FREDRICKA

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

06/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/648,132

**Applicant(s)**

SCHIEWE ET AL.

**Examiner**

Annette F. Dixon

**Art Unit**

3771

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 31, 32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 31, 32 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This Office Action is in response to the request for continued examination filed on March 21, 2008. Examiner acknowledges claims 1-14, 31, 32, and 34 are pending in this application.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-14, 31, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casper et al. (6,644,309) in view of Casper et al. (6,550,477).

As to Claims 1-4, 32, and 34, Casper('309) discloses a device for the delivery of a drug in an aerosol of droplets by delivery of the drug under pressure, comprising: a container cartridge (72) having a non-pressurized cylinder, at rest, containing a single dose of the drug, a piston (30) communicating with one end of the cylinder (via valve stem 58), and an outlet end (76) opposite the inlet end having a dispensing facility and means for feeding the drug thereto; an elastic element (34) for the storage of a predetermined quantity of energy; a mobile element (the movement of the piston 30 within the housing 36) to which the predetermined quality of energy can be fed and which is coupled to the piston such that the energy can move the piston and expose the single dose of the drug to a predetermined increase in pressure within the cylinder. (Figure 1, Column 6, Lines 30-33). Yet, Casper('309) does not disclose a means for the

respective introduction and removal of the container cartridge into and from an accommodation chamber within the device. However, at the time the invention was made the means for respective introduction and removal of the container cartridge was known. Specifically, Casper('477) teaches the use of a hinged inhaler to enable provide a means for the inhaler to be covered with a cap mechanism and to enable the inhaler cartridge to be replaced for multiple uses. (Column 5, Lines 24-31). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Casper('309) to include a hinged means for introduction and removal of the cartridge, as taught by Casper('477) to enable the inhaler device to be reused.

As to Claim 5, Casper('309) discloses a removable grip (44).

As to Claims 6-9, Casper('309) discloses the upper housing (64) the middle housing (60) and the lower housing (36) yet does not disclose the portions to be rotably removed from each other. However, Casper('477) teaches a lower housing section (424), which defines the bottom side of the device and a upper housing section (442) wherein the container cartridge can be introduced into a bore passing through the upper housing (1) for enabling the device to be constructed and deconstructed for reuse.

As to Claims 10-14, Casper('309) discloses a locking mechanism between the upper housing (64) the middle housing (60) and the lower housing (36) wherein the locking mechanism between the upper and middle are elements 62 and 66 and the locking mechanism between the middle and lower housing are the combination of elements 38 and 32.

***Response to Arguments***

4. Applicant's arguments filed March 21, 2008 have been fully considered but they are not persuasive. Applicant asserts the prior art made of record does not teach or fairly suggest "a piston in the cylinder". However, the Examiner respectfully disagrees. The movement of the piston/plunger (30) urges the movement of element 58 thereby facilitating the bursting of the container (72). (Column 9, Lines 10-40). Intrinsically, at the point in which element (58) urged by the piston is in contact with the container (72) the piston is within the cylinder. Therefore, in light of the aforementioned reasoning the rejection of the claims has been maintained.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Collins et al. (2007/0119968 and 2007/0119969) are cited to show different pistons.
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3771

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justine R Yu/  
Supervisory Patent Examiner, Art Unit 3771

Annette F Dixon  
Examiner  
Art Unit 3771

/Annette F Dixon/  
Examiner, Art Unit 3771